

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Kevin William
Caswell, d/b/a Caswell Windows
and Siding

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a prehearing conference before Administrative Law Judge Manuel J. Cervantes on Thursday, April 23, 2009, at the St. Paul offices of the Office of Administrative Hearings, pursuant to a Notice and Order for Prehearing Conference signed by Charlie Durenberger, Manager, Enforcement Services.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department).

There was no appearance by, or on behalf of, Respondent Kevin William Caswell after due notice by U.S. mail at Respondent's last known address. The hearing record closed on April 23, 2009.

STATEMENT OF THE ISSUES

1. Whether the Respondent violated Minn. Stat. §§ 326.84, subd. 1 and 1b; 326.842; and 326.91, subd. 1(5) (2006) by advertising and entering into a contract to provide residential services and engaging in unlicensed residential building contractor work?

2. Whether the Respondent violated Minn. Stat. § 326.91, subd. 1(5) (2006)?

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On March 23, 2009, a Notice and Order for Prehearing Conference and Statement of Charges in this matter were mailed to the Respondent's last known address. The Notice of and Order for Prehearing Conference indicated that a conference would be held in this matter on April 23, 2009.

2. The Notice and Order for Prehearing Conference in this matter includes the following statements:

Respondent's failure to appear at the prehearing conference, settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that Respondent may be subject to discipline by the Commissioner, including revocation, suspension, censure, or the imposition of civil penalties.

Pursuant to Minn. Stat. § 45.027, subd. 6 (2006), Respondent may be subject to a civil penalty not to exceed \$10,000 per violation upon a final determination that Respondent violated any law, rule or order related to the duties and responsibilities entrusted to the Commissioner.

3. There was no appearance by, or on behalf of, Respondent Kevin William Caswell at the April 23, 2009 prehearing conference. No prehearing request was made for a continuance, nor was any communication received by the undersigned from Kevin William Caswell.

4. The Statement of Charges alleges that:

- A. The Respondent is not licensed in any capacity by the Department.¹
- B. On November 30, 2006, Kevin Caswell, individually, and d/b/a Choice Exteriors, signed a Consent and Desist Order, which required him to refrain from any further work as a residential building contractor, remodeler, or roofer in the State of Minnesota.
- C. In July 2007, following a storm that caused damage to homes in and around Harris, Minnesota, Respondent circulated an advertisement claiming to have 15 years of experience in "siding, window's [sic] and roofing."
- D. On July 18, 2007, Respondent entered into a \$14,075 contract with a Harris homeowner to replace siding, fascia, and gutters, as well as to re-roof the entire home.

5. The allegations contained in the Statement of Charges are deemed proven and are incorporated into these Findings by reference.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

¹ The Department's enabling legislation was substantially revised and re-codified in Chapter 326B, effective December 1, 2007. The law in effect at the time of Respondent's alleged violations, however, was the 2006 version of the statute: Minn.Stat. §§ 326.83-326.992 (2006).

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50, 326.84, subd. 1 and 1b; 326.842; 326.91, subd. 1 (5) (2006); and 45.027, subd. 6 (2004).

2. The Department sent to Respondent's last known address the Notice and Order for Prehearing Conference, a Statement of Charges against him, and of the time and place of the prehearing conference.² This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.³

3. Respondent is in default as a result of his failure to appear at the scheduled prehearing conference.

4. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations and claims set forth in the original Statement of Charges may be taken as true or deemed proved without further evidence.

5. Based upon the facts set forth in the Statement of Charges, Respondent was not licensed by the Department, as required by Minn. Stat. §§ 326.84 and 326.842 (2006), when he held himself out as a residential building contractor and roofer.

6. Based upon the facts set forth in the Statement of Charges, Respondent has violated the Consent and Desist Order, executed between Respondent and the Department on November 30, 2006.

7. Based upon the facts set forth in the Statement of Charges, there is a basis for the imposition of a civil penalty under Minn. Stat. § 45.027, subd. 6. (2006).

8. The imposition of disciplinary sanctions against Respondent is in the public interest.

Based upon these Conclusions, the Administrative Law Judge makes the following:

² The letter was returned as undelivered, no forwarding address.

³ Minn. R. 1400.5550, subp. 2.

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that appropriate disciplinary action be taken against Kevin William Caswell, d/b/a Caswell Windows and Siding. The undersigned recommends that discipline be imposed upon Counts I and II of the Statement of Charges.

Dated: April 28, 2009

s/Manuel J. Cervantes

MANUEL J. CERVANTES

Administrative Law Judge

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, General Counsel, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, Minnesota 55155 or call the Department at (651) 284-5492 to learn about the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.